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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

RAYMOND BALL, an individual, and JOSEPH
TOTH, an individual,

Plaintiffs,

v.

MATTHEW CARSON, an individual,
WILLIAM CARSON, an individual,
TERRANCE THURBER, an individual,
THOMAS THURBER, an individual, DG
ROLLINS MINING, LLC, a Wyoming limited
liability company, COLUMBIA GORGE DATA
CENTER, LLC, a Nevada limited liability
company, WHC & SWC INVESTMENTS, LTD,
a Texas limited partnership, INTELLIGENT
INVESTMENTS, LLC, a Texas limited liability
company, and SNICKERS #1, LLC, a Texas
limited liability company,

Defendants.

Case No. 3:19-cv-00242-HZ

**Supplemental Declaration of Counsel in
Support of Reply to Extend Discovery
Deadlines**

I, DAMON SEMMENS, declare under penalty of perjury as follows:

1. I am lead counsel for the plaintiffs in this case. I make this declaration based on my personal knowledge, and I am competent to testify to the matters stated herein.

2. I have not noticed defendants' depositions or subpoenaed third-party witnesses for deposition because of the delays described in plaintiffs' motion and the initial confusion caused

by the coronavirus pandemic, which has made in-person depositions practically impossible. While the situation over the past several weeks has been fluid, any initial doubts about the propriety of conducting an in-person deposition have been clarified by the entry of “shelter in place” orders in Oregon and my home state of Colorado, both of which restrict non-essential activities and travel. As a result, plaintiffs cannot not use the remaining discovery period to conduct depositions without violating the law and endangering the participants. While plaintiffs’ counsel is currently exploring the possibility of using video depositions in this and other cases, it will take time to locate and test tools that will work during the quarantine. Further, assuming the right tools can be found, each deposition will likely have to be evaluated on a case-by-case basis to determine whether the deponent and other key participants can reliably network together long enough to complete the deposition and explore any relevant documents. A significant task, given the fact that each participant will likely be using their personal equipment and home internet connection (most of which have been unreliable of late). This logistical problem is only compounded by the intricate and highly detailed nature of the documents at issue in this case, which make it a poor candidate for electronic depositions under the best of circumstances. More time is therefore needed to determine whether an effective deposition may be taking during the quarantine period.

3. Shortly after the Rule 16 conference in this case, defendants’ counsel requested a detailed and honest statement of the case together with supporting documents to facilitate potential settlement discussions between the parties. I spent nearly three weeks interviewing witnesses and combing the extensive record to put together a good faith statement of the case to facilitate those discussions. The parties went back and forth, and ultimately, it was not until early December 2019 that plaintiffs’ counsel responded that his clients would not consider any settlement whatsoever.

4. The Response’s description of the plaintiffs’ March 13, 2020, Requests for Admission and Interrogatories is inaccurate to the extent it suggests these materials merely refer

back to the allegations in the Complaint. To the contrary, the requests for admission ask defendants to authenticate at least 11 documents developed through plaintiffs' informal discovery efforts and the vast majority of plaintiffs' interrogatories ask defendants to clarify facts and specific items of evidence gathered through plaintiffs' informal investigations and third-party witness interviews, a substantial portion of which have occurred since this case was filed.

5. Plaintiffs do not oppose further modifications to the court deadlines, including the dispositive motion deadline.

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

DATED: March 26, 2020

s/ Damon Semmens

Damon Semmens

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **Supplemental Declaration of Counsel in Support of Reply to Extend Discovery Deadlines** on the date indicated below by:

- ☐ mail with postage prepaid, deposited in the US mail at Portland, Oregon,
- ☐ hand delivery,
- ☐ facsimile transmission,
- ☐ overnight delivery,
- ☒ electronic filing notification.

If served by facsimile transmission, attached to this certificate is the printed confirmation of receipt of the documents generated by the transmitting machine. I further certify that said copy was placed in a sealed envelope delivered as indicated above and addressed to said attorneys at the addresses listed below:

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Robert B. Miller
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Terrence Thurber, Thomas Thurber,
DG Rollins Mining, LLC and
Columbia Gorge Data Center, LLC

DATED: March 26, 2020

s/ Amber A. Beyer

Amber A. Beyer